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Supreme Court of the United States

OCTOBER TERM, 1954.

No. 11 Original

THE STATE OF MISSISSIPPI,
Complainant,

versus

THE STATE OF LOUISIANA,
Defendant.

MOTION FOR LEAVE TO INTERVENE AS CO-DEFENDANT, AND FOR ALTERNATIVE RELIEF; AND ANSWER OF INTERVENING CO-DEFENDANT.

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Counsel for Movants and
Intervening Co-Defendants.

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MOTION FOR LEAVE TO INTERVENE AS CO-DEFENDANT, AND FOR ALTERNATIVE RELIEF; AND ANSWER OF INTERVENING CO-DEFENDANT.

To the Honorable Earl Warren, Chief Justice of the Supreme Court of the United States of America, and Associate Justices:

The Motion of Eleanor R. Woolgar and Erma L. Richards, all adult residents and citizens of the State of Indiana, respectfully show to this Honorable Court, in support of their Motion of Intervention and for Alternative Relief, as follows:

Movants show that they are parties-plaintiff in that certain cause captioned "*Eleanor R. Woolgar and Irma L. Richards v. C. W. Hunter Company*," being Number 1940 on the docket of the United States District Court, Western District of Louisiana, Monroe Division, and which case has been consolidated with the cases of "*Albert W. Iselin et al. v. C. W. Hunter Company et al.*" Number 1939, and "*John F. Iselin v. J. H. Valentine*," Number 3066 in the same court; that a trial was had in said consolidated causes at the October 1952 Term of said United States District Court, and the said consolidated causes were taken under advisement by the District Judge, judgment to be rendered when a decision has been first rendered by the United States Supreme Court in the instant case.

Movants show that they are the owners of a certain tract of land which is the subject-matter of cause Number 1940 in the district court at Monroe, Louisiana, and which said tract of land is more particularly described, as follows, to-wit:

All of ~~Section Eighteen~~ (18) in Township Fourteen (14), North Range Fourteen (14) East in the District of Lands North of Red River, containing according to the original survey 629.12 acres of land situated in Madison Parish, State of Louisiana, together with all accretions accruing thereto.

That the ~~said quit-claim~~ deed was executed by Judge Jeff B. Snyder in favor of these Movants on

March 18, 1944, and was filed and recorded on March 18, 1944, in the office of the recorder of Madison Parish, Louisiana.

And Movants further show that said tract of land owned by them is situated in Madison Parish, State of Louisiana, and has always been known as wholly within the boundary of said State of Louisiana, and not within the boundary of the State of Mississippi.

And Movants further show that the State of Mississippi on the 15th day of June, 1953, filed her suit in this Honorable Court against the State of Louisiana, for the purpose of establishing a correct boundary line between these sister states between the following points:

Beginning at a point where the thalweg of the Mississippi River, as it now flows, crosses the line of 32 degrees 15 minutes of north latitude, and extending from thence to a point where the said boundary in the old bed of the Mississippi River now known as Palmyra Lake crosses the Meridian line 91 degrees and 7 minutes west of Greenwich.

And Movants show that the tract of land owned by them is situate and being on Diamond Point and wholly within the State of Louisiana and within the course of the Mississippi where a correct boundary line is prayed for by the State of Mississippi; that the pleadings in this cause show that the State of Mississippi in her original bill of complaint claims

her western boundary line down the disputed section encompasses and includes the said Section 18 and accretions owned by these Movants; that the Answer filed by the State of Louisiana vigorously disputes the claim of Mississippi to the said Section 18 and accretions, but Movants show and aver and charge the fact to be that since the filing of the said Answer, the State of Louisiana is now conceding Section 18 and accretions falls within the boundary of the said state of Mississippi, which Movants show is incorrect and erroneous and without foundation in fact.

And Movants show and aver and charge the fact to be that said Section 18 and accretions is wholly within the boundary of the State of Louisiana, and that this they are prepared to prove; and that at this very moment a Special Master of this Honorable Court is taking testimony in Vicksburg, Mississippi, relating to said disputed boundary line, and representatives of the State of Louisiana have on a number of occasions refused to accept or use information tendered by and on behalf of these Movants which it is claimed will conclusively show that their land—Section 18 and accretions—involved both in the pending case in the district court at Monroe, and in the disputed territory, is wholly within Louisiana.

Movants desire to call this to the specific attention of this Honorable Court: There are three distinct interests within this disputed boundary zone: Learned's, Hunter's and Movants' together with Iselins'. The Learned interests have been litigating within this dis-

puted boundary district for the past twenty odd years, and their counsel is now the special assistant attorney general of Mississippi; and the Hunter interests are identical with the C. W. Hunter Company who is the defendant in your Movants' case now pending in the District Court at Monroe, and whose counsel is actively participating in the instant case. Movants therefore, feel that in all equity that they should not be excluded from all participation in this proceeding which has the possibility of adversely affecting their case in the District Court at Monroe, should it go by default.

Movants cite the following authorities on the point as to Movants' right to have this Motion sustained:

Florida v. Georgia, 17 Howard, page 491, 15 L. Ed. 181;

Texas v. Florida, 306 U. S. page 398, 83 L. Ed. 817.

And they show and aver and charge the fact to be that the proceedings involved herein are not essentially an issue between the respective states but rather are an organized effort on the part of certain land owners to have the boundary adjusted in conformity to their own selfish interests.

And Movants show that the State of Mississippi has no legal right under the constitution and laws of the United States, or the decisions of this Court, to proceed with the prosecution of said cause for the reason that the State of Mississippi is resorting to the original

jurisdiction of this Court for the benefit of particular individuals, namely the Learned and Hunter interests, and that the suit for all practical purposes, could with perfect propriety be captioned *"Learned and Hunter, by the State of Mississippi, next friend v. The State of Louisiana."*

That it is impossible to find the line of demarcation between the interests of the State of Mississippi, and the private parties involved, and the whole has become, to use a vernacular expression, an olla podrida.

Movants cite as authority:

Oklahoma ex rel Johnson v. Cook, 304 U.S. 387 et seq. 82 L.Ed. 1416.

Movants ask that the Exhibit "A" attached to and made a part of their Answer, be made and considered a part of this Motion of Intervention as much so as if copied in full herein.

And Movants show to this court that they should be permitted to intervene as co-defendants to combat and controvert Mississippi's claim to have her western boundary extended to include their said tract of land; that to not permit them to so do will grieviously sacrifice their legal and constitutional rights.

And Movants further show that the proceedings in the instant case have not reached such a state as would cause any delay or embarassment to any of the parties concerned, by permitting your Movants to intervene.

And Movants attach hereto and tender the Answer of the Intervening Co-Defendants.

Wherefore, in conclusion, Movants pray that this Court may by due orders sustain the prayer of this Motion and permit them to intervene as co-defendants, or that in the alternative they be heard by this Honorable Court and the Special Master by evidence and briefs of their counsel as amicus curae and, figuratively speaking, drive the Learned and Hunter interests and their next friend, the State of Mississippi, out of their illy-fortified and illy-protected legal entrenchments.

Respectfully submitted,

ELEANOR R. WOOLGAR AND
ERMA L. RICHARDS,
Movants,

By L. BRYAN DABNEY, of the law firm of DABNEY & DABNEY, of Vicksburg, Mississippi, Counsel for Movants.

L. BRYAN DABNEY, of the law firm of DABNEY & DABNEY, of Vicksburg, Mississippi, Counsel for Movants.

CERTIFICATE.

This is to certify that copies of the within Motion f Intervention have been served on the Attorney eneral of the State of Mississippi, and the Attorney eneral of the State of Louisiana.

Vicksburg, Mississippi, the 23rd day of July, 1954.

L. BRYAN DABNEY, of the law firm of DABNEY & DABNEY, of Vicksburg, Mississippi, Counsel for Movants.

SUPREME COURT OF THE UNITED STATES.

October Term, 1954.

No. 11, Original.

THE STATE OF MISSISSIPPI,
Complainant,
versus
THE STATE OF LOUISIANA,
Defendant.

ANSWER OF INTERVENING CO-DEFENDANTS.

To the Honorable Earl Warren, Chief Justice, and Associate Justices of the Supreme Court of the United States of America:

The Answer of Eleanor R. Woolgar and Erma S. Richards, adult residents and citizens of the State of Indiana, Intervening Co-defendants herein, to the Bill of Complaint filed by the State of Mississippi, shows to this Honorable Court, as follows:

They neither admit or deny the allegations set forth in Article One of the bill of complaint;

They admit all and sundry the allegations set forth in Article Two of the bill of complaint.

They admit all and sundry the allegations set forth in Article Three of the bill of complaint.

They admit all and sundry the allegations set forth in Article Four of the bill of complaint.

Answering Article Five of the bill of complaint they admit that Warren County, State of Mississippi, is on the Mississippi River, between the 33rd and 31st degrees of north latitude, but deny specifically that Diamond Point and accretions thereto are located in the county of Warren and State of Mississippi, and are part of the State of Mississippi, but instead allege and show that said Diamond Point and accretions are wholly within the Parish of Madison, State of Louisiana.

They neither admit or deny the allegations set forth in Article Six of the bill of complaint.

They deny all and singular the allegations set forth in Article Seven of the bill of complaint with the exceptions:

It is admitted:

(a) That lands known as Diamond Point, as they presently exist, lie generally to the south of Diamond-Island and Diamond Island Towhead;

(b) That the said Diamond Point was formed as the result of action or change in the course or courses of the Mississippi River, subsequent to the admission of the States of Mississippi and Louisiana, respectively, into the union;

(c) That accretion was formed, with respect to Diamond Point, after such change or changes in the course and channel of the Mississippi River, but that the same occured and attached itself to dry lands within the territory of the State of Louisiana;

(d) That, in about the year 1933, the Corps of Engineers of the United States, acting in conjunction with the Mississippi River Commission of the United States, in work for the improvement of navigation of the Mississippi River and flood control, did make and effect an artificial cut-off across the neck of Diamond Point;

(e) That such cut-off created a new channel for the Mississippi River and has become the main channel of said river as it traverses or flows through a portion of Diamond Point;

(f) That the old channel has in part been gradually filled and closed by sedimentation and accretion; and,

(g) That Diamond Point has not washed entirely away.

Further answering the seventh article of the bill of complaint, they show and aver and charge the fact to

be that no attempt was made by plaintiff in its bill of complaint to locate Diamond Point by governmental subdivisions, sections, townships and ranges. Because of such inadequacy, indefiniteness and vagueness, defendant can only admit that a change was made in the course or channel of the Mississippi River, at, through or adjacent to Diamond Point, as such lands presently exist, resulting in a separation of such lands; leaving the greater part to the west of the present channel of the Mississippi River and the remaining portion to the east of said river; but in so admitting, defendant does not concede that such change in the course of the river was made at places where plaintiff may attempt to show that it occured or that any part of Diamond Point or accretion are in Mississippi.

Further answering the seventh article of the bill of complaint, they show that plaintiff's declarations as to changes in land formation or topography, the location of accretion how the latter was formed, and the consequences thereof, following the change in the course or channel of the Mississippi River, are based largely on conjecture and theory, constitute conclusions of the pleader, represent argument, and are self-serving in nature, therefore, they feel justified in declining to answer and be bound by any admissions except as to factual averments in the bill of complaint.

They deny all and singular the allegations set forth in Article Eight of the bill of complaint.

They deny and sundry all in Article Nine of the bill of complaint except that they admit that Diamond Point is in Louisiana and Louisiana has rightfully taxed the tract of land owned by them on Diamond Point and has exercised all sovereign rights and powers as she has a right to do.

Answering Article Ten of the bill of complaint, they admit that the maps, surveys, charts and other documents described in the tenth article of the bill of complaint have been filed with the Clerk of the Supreme Court of the United States of America and that they are a part of the bill of complaint. It is denied, however, that said documents are controlling or furnish proof of the position taken by the State of Mississippi in this purported boundary controversy.

Answering Article Eleven of the bill of complaint, they deny that Louisiana has infringed the sovereignty of the State of Mississippi; refutes the necessity of an adjudication on a purported issue which does not involve that character of controversy between the states with which Section 2 of Article III of the Constitution of the United States of America deals, and disputes the claim of the State of Mississippi to levy and collect taxes on the lands involved in this alleged boundary issue, or that any part of Diamond Point or accretions are in Mississippi.

And said Intervening Co-defendants show further that they are the owners of the following described tract or parcel of land:

All of Section Eighteen (18) in Township Fourteen (14), North Range Fourteen (14) East in the District

of Lands North of Red River, containing according to the original survey 629.12 acres of land situated in Madison Parish, State of Louisiana, together with all accretions accruing thereto, and being a part of Diamond Point in the State of Louisiana.

That the said quit-claim deed was executed by Judge Jeff B. Snyder in favor of them on March 18, 1944, and was filed and recorded on March 18, 1944, in the office of the recorder of Madison Parish, Louisiana.

And they further show that said tract of land owned by them is situated in Madison Parish, State of Louisiana, and has always been known as wholly within the boundary of said State of Louisiana, and not within the boundary of the State of Mississippi.

And they further show that the State of Mississippi on the 15th day of June, 1953, filed her suit in this Honorable Court against the State of Louisiana, for the purpose of establishing a correct boundary line between these sister states between the following two points:

Beginning at a point where the thalweg of the Mississippi River, as it now flows, crosses the line of 32 degrees 15 minutes of north latitude, and extending from thence to a point where the said boundary in the old bed of the Mississippi River now known as Palmyra Lake crosses the Meridian line 91 degrees and 7 minutes west of Greenwich.

And Intervening Co-defendants show that the tract of land owned by them is situate and being on Dia-

mond Point and wholly within the State of Louisiana and within the course of the Mississippi where a correct boundary line is prayed for by the State of Mississippi; that the pleadings in this cause show that the State of Mississippi in her original bill of complaint claims her western boundary line down the disputed section encompasses and includes the said Section 18 and accretion owned by them; that the Answers filed by the State of Louisiana vigorously disputs the claim of Mississippi to said Section 18 and accretions, but they show and aver and charge the fact to be that since the filing of the said Answer, the State of Louisiana is now conceding Section 18 and accretions falls within the boundary of the said State of Mississippi, which they show is incorrect and erroneous and without foundation in fact.

And they show and aver and charge the fact to be that said Section 18 and accretions is wholly within the boundary of the State of Louisiana, and that this they are prepared to prove; and that at this very moment a Special Master of this Honorable Court is taking testimony in Vicksburg, Mississippi, relating to said disputed boundary line, and representatives of the State of Louisiana have on a number of occasions refused to accept or use information tendered by on behalf of them which it is claimed will conclusively show that their land—Section 18 and accretions—involved both in the pending case in the District Court at Monroe, and in the disputed territory, is wholly within Louisiana.

And they attach hereto as Exhibit "A" to this Answer a copy of Map showing Channel Changes in vicinity of Davis Island, correct and present state boundary line being shown in red ink, and ask that same be made and taken as a part of this Answer, as much so as if copied in full herein.

They desire to call this to the specific attention of this Honorable Court: There are three distinct interests within this disputed boundary zone: Learned's, Hunter's and Movants' together with Iselins'. The Learned interests have been litigating within this disputed boundary district for the past twenty odd years, and their counsel is the special assistant attorney general of Mississippi in this boundary case; and the Hunter interests are identical with the C. W. Hunter Company who is the defendant in your Movants' case now pending in the District Court at Monroe and whose counsel is assisting the State of Mississippi.

They therefore, feel that in all equity that they should not be excluded from participation in this proceeding which has the possibility of adversely affecting their case in the District Court at Monroe, should it go by default.

They show that they are parties-plaintiff in that certain cause captioned *"Eleanor R. Woolgar and Irma L. Richards v. C. W. Hunter Company,"* being Number 1940 on the docket of the United States Dis-

trict Court, Western District of Louisiana, Monroe Division, and which case has been consolidated with the cases of "*Albert W. Iselin et al. v. C. W. Hunter Company et al.*," Number 1939, and "*John F. Iselin v. J. H. Valentine,*" Number 3066 in the same court; that a trial was had in said consolidated causes at the October 1952 Term of said United States District Court; and the said consolidated causes were taken under advisement by the District Judge, judgment to be rendered when a decision has been first rendered by the United States Supreme Court in the instant case.

And they show that the United States District Court at Monroe, took jurisdiction of the action there on the grounds that the land, the subject-matter of the suit, was situate, lying and being in Louisiana, and not in Mississippi.

And these intervening co-defendants show to this Court that the pleadings and transcript of the testimony in said consolidated cases in the United States District Court at Monroe show the full nature and extent of their claims in and to this land.

And Intervening Co-Defendants show that for many years, all with the knowledge of and without protest from the State of Mississippi, the Parish of Madison, Louisiana, and the State of Louisiana have exercised general civil and criminal jurisdiction over such

lands and the residents thereof; and to the extent of its authorized functions, the Board of Commissioners of the Fifty Louisiana Levee District has exercised jurisdiction over such lands in part.

Finally answering said bill of complaint, Intervening Co-Defendants show the Court that the State of Mississippi precipitated this boundary dispute by claiming lands to be within its territory which has long been recognized as comprising a part of the territory of the State of Louisiana and said state has and must bear the burden of proof.

In conclusion, Intervening Co-Defendants pray:

(a) That the bill of complaint herein filed be dismissed as failing to state or show a controversy between states, under Section 2, Article III of the Constitution of the United States of America.

(b) In the alternative, that Intervening Defendant's plea of acquiescence and estopped against complainant be sustained and the bill of complaint dismissed.

(c) In the alternative, and in the alternative only, that said bill of complaint is not dismissed, there be judgment by this Court establishing the boundary line between the State of Mississippi, and the State of Louisiana at such place or location, so as to place

Diamond Island, Diamond Island Towhead and Diamond Point within the confines of the territory of the State of Louisiana.

Respectfully submitted,

ELEANOR R. WOOLGAR and
ERMA L. RICHARDS,
Intervening Co-Defendants,
By L. BRYAN DABNEY, of the law firm of DABNEY & DABNEY, of Vicksburg, Mississippi, Counsel for Intervening Co-Defendants.

L. BRYAN DABNEY, of the law firm of DABNEY & DABNEY, of Vicksburg, Mississippi, Counsel for Intervening Co-Defendants.

CERTIFICATE.

This is to certify that copes of the within Answer of Intervening Co-Defendants have been served on the Attorney General of the State of Mississippi, and the Attorney General of the State of Louisiana.

Vicksburg, Mississippi, the 23rd day of July, 1954.

L. BRYAN DABNEY, of the law firm of DABNEY & DABNEY, of Vicksburg, Mississippi, Counsel for Intervening Co-Defendants.